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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/378,666	08/20/1999	DAVID JOHN WATSON	60046/JPW/JH	9407

7590 05/08/2002

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EXAMINER

NGUYEN, SANG H

ART UNIT PAPER NUMBER

2877

DATE MAILED: 05/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/378,666

Applicant(s)

WATSON ET AL.

Examiner

Sang H Nguyen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 February 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 14-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 14-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's amendment dated 02/08/02 is entered and made of record in Paper # 7. It is noted that the present application contains claims 1-2 and 14-33 and claims 3-13 have been canceled by the amendment filed on 02/08/02.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 14, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Igushi et al (U.S. Patent No. 5,185,641). (See the reasons as indicated in the previous office Action dated 10/04/01 in Paper No. 5).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 15-21, and 23-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Igushi et al (U.S. Patent No. 5,185,641). (See the reasons as indicated in the previous office Action dated 10/04/01 in Paper No. 5).

***Response to Arguments***

5. Applicant's arguments filed on 02/08/02 have been fully considered but they are not persuasive.

Applicant's remark argues that Igushi et al ('641) does not disclose or suggest the computation means for calculating the particle size distribution taking into account reflections by the measurement zone of light that has previously been scattered by the particles, and thereby improves the accuracy of the calculations and obtains a more accurate prediction of the particle size distribution.

This argument is not persuasive. Igushi et al discloses the claimed invention at figures 1 and 7, for example, the computation means [is considered to be a multiplexer (37 of figure 1), A/D convertor (39 of figure 1), and operating device (40 of figure 1)] for calculating the particle size distribution taking into account reflections by the measurement zone (21 of figure 1) of light that has previously been scattered by the particles (col.6 lines 42-68 and col.7 lines 1-5, and col.13 lines 13-54). Further, the above limitation "and thereby improves the accuracy of the

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calculations and obtains a more accurate prediction of the particle size distribution” is not mention in the independent claims.

In view of foregoing, it is believed that the rejection of claim 1-2, and 14-33 under 35 U.S.C 102 and 103 are proper.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant’s disclosure.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Sang Nguyen whose telephone number is (703) 308-6426. The examiner can normally be reached on Monday through Friday from 8:30 am to 5:00 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Frank Font, can be reached on (703) 308-4881. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7722 or 7724.

Any inquiry of general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

SN

Nguyen/ sn

April 23, 2002

  
Frank G. Font  
Supervisory Patent Examiner  
Technology Center 2800